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**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED** : 14.11.2024

CORAM

**THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH**

**W.P.No.22766 of 2021**

**and**

**W.M.P.Nos.23993 & 23994 of 2021**

A.Suhail

... Petitioner

Vs.

1.State of Tamil Nadu rep. By its  
Principal Secretary to Government,  
HR & CE Department,  
Secretariat,  
Chennai-600 009.

2.The Commissioner,  
HR & CE Department,  
119, Uthamar Gandhi Salai,  
Nungambakkam,  
Chennai-600 034.

3.The Joint Commissioner/Executive Officer,  
HR & CE Department,  
State of Tamil Nadu,  
Arulmigu Kapaleeswarar Arts and Science College,  
Everwin Matriculation Hr. Sec. School,  
Chennai-600 099.

....Respondents

**Prayer:-**Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the notification viz., employment



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advertisement (Proceedings Nil dated Nil) which was published in Dinakaran Daily dated 13.10.2021 on the file of the third respondent quash the same and direct the respondents to permit the petitioner to compete for the above post of Office Assistant.

For Petitioner : Mr.S.Doraisamy

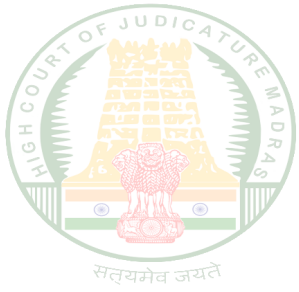
For Respondent : Mr.S.Ravichandran, AGP  
Nos.1 & 2

For Respondent-3:Mr.S.Surya  
for A.S.Kailasam & Associates

### **ORDER**

Challenging the proceedings of the notification of the third respondent viz., employment advertisement (Proceedings Nil dated Nil) which was published in Dinakaran Daily dated 13.10.2021, the present petition has been preferred. The petitioner further seeks a direction to the respondents to permit him to compete for the post of Office Assistant.

2. Heard both sides.



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3. The short facts which leads to the filing of the present petition is as follows:

3.1. The third respondent herein issued a notification on 13.10.2021 for making appointments in Arulmigu Kapaleeswarar Arts and Science College, Kolathur and called for walk in interview for various posts and also invited applications for the posts of Assistant, Junior Assistant/Typist, Office Assistant, Watchman, Cleaner and Sweeper for which interview to be held on 18.10.2021 at 2.00 pm. One of the conditions stated in the notification is that only "Hindus" can apply for all the above posts.

3.2. The petitioner herein is a Tamil Muslim by birth and due to the aforesaid condition, he could not be eligible for attending the interview for the post of Office Assistant. Aggrieved over the said condition in the notification dated 13.10.2021, the petitioner has come forward with the present petition.

4. The learned counsel for the petitioner submitted that the respondents' condition that 'Hindus only' can apply is against the provisions of Article 16(1) and 16(2) of the Constitution of India. The



said provisions is extracted hereunder for ready reference:

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*"16.Equality of opportunity in matters of the public employment:*

*(1)There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.*

*(2)No citizens shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State."*

Hence, the condition imposed by the third respondent is unconstitutional. He further referred to Article 16(5) of the Constitution of India and the same reads as under:

*"16(5).- Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination."*

He contended that the above Article 16(5) will be applicable only for the appointment in the Hindu Religious Institution or denominational institution or the governing body of the Hindu Religious institution



and not for the college run by the third respondent, as it is only an educational institution and not a religious institution, which is defined in Section 6(18) of the Hindu Religious and Charitable Endowments Act, 1959 (by short "HR & CE" Act) which reads as:

*Section 6(18).- "Religious institution" means a math, temple or specific endowment and includes:-*

*(i) a samadhi or brindhavan; or*

*(ii) any other institution established or maintained for a religious purpose.*

*Explanation.- For the purpose of this clause-*

*(1) "samadhi" means a place where the mortal remains of a guru, sadhu or saint is interned and used as a place of public religious worship;*

*(2) "brindhavan" means a place established or maintained in memory of a guru, sadhu or saint and used as a place of public religious worship, but does not include the samadhi;)*

5. He further submitted that Section 10 of the HR & CE Act states that Commissioner and other officers of the HR & CE Department should be a person professing Hindu Religion. Section 10 of the HR & CE Act reads as follows:

*"10. Commissioner, etc., to be Hindus.-The Commissioner, [the Additional Commissioner], [every Joint, Deputy or Assistant Commissioner]*



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*and every other officer or servant appointed to carry out the purpose of this Act, by whomsoever appointment, shall be a person professing the Hindu Religion and shall cease to hold office as such when he ceases to profess that religion."*

Highlighting the above Section, he argued that the aforesaid provision did not prevent the non Hindus from being appointed as teaching staff or other staff of the college, since they do not have any duty concerning the religion.

6. He drew the attention of this Court to the decision of the Hon'ble Supreme Court in the case of ***Adi Saiva Sivachariyargal Nala Sangam Vs Government of Tamil Nadu*** reported in **2016 (2) SCC 725**, wherein, in paragraphs 37 & 38, it has held as follows:

*"37.Article 16 (5) which has virtually gone unnoticed till date and, therefore, may now be seen is in the following terms:*

*"16(5)-Nothing in this Article shall affect the operation of any law which provides that an incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular*



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*religion or belonging to a particular denomination.”*

*38. A plain reading of the aforesaid provision i.e. Article 16(5), fortified by the debates that had taken place in the Constituent Assembly, according to us, protects the appointment of Archakas from a particular denomination, if so required to be made, by the Agamas holding the field. The debates in the Constituent Assembly referred to discloses that the suggestion that the operation of Article 16(5) should be restricted to appointment in offices connected with administration of a religious institution was negated. The exception in Article 16(5), therefore, would cover an office in a temple which also requires performance of religious function. In fact, the above though not expressed by the Constitution Bench in Sheshammal (supra).*

7. Continuing his submissions, he stated that the appointment of the staff in the third respondent is not governed by the Tamil Nadu HR & CE but by the education code only for which Article 16(1) and 16(2) alone will be applicable and the exception in Article 16(5) will not be applicable. Hence, no appointment on the basis of religion can



be made. He further submitted that administrating an educational institution is a secular activity and not a religious activity and Article 25 and 26 will not come to the rescue of the respondents. Thus, the learned counsel submitted that the petition has to be allowed.

8. Contrary to the submissions of the learned counsel for the petitioner, the learned counsel for the respondents submitted that only Hindus are eligible for appointment in the College started by the Temple, since it is a religious institution governed by the Tamil Nadu HR & CE Act. As per the Act, the employees must be Hindus only. He further submitted that the College is a fully funded institution under the Arulmigu Kapaleeswar Temple, Chennai and the third respondent has to fully abide by the provisions of the Act in selecting persons for employment in the College, who have to be Hindus only. The College forms part of the temple's activities which in turn regulates the running of any Hindu religious institution and therefore, the provision cited by the petitioner does not apply to the third respondent, the temple or the college. He added that the college has been run independently without any financial aid from the State and the college is not a minority institution but self financing college running only unaided courses due to which government rules as

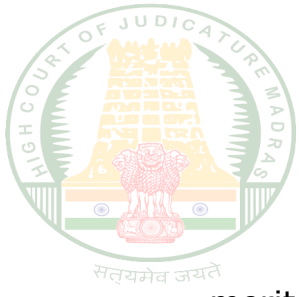




regards employment are not applicable. He contended that the posts which are the subject issue of the petition falls under the category of self financing institution. He argued that the college does not fall within the category of the State and hence, Article 16(5) will apply. Hence, he prayed this Court to dismiss the petition.

9. Heard the submissions on either side and also perused the materials available on record.

10. On perusal of the records, it is seen that the third respondent/college is a self financing institution run by the temple without acquiring any aid from the State and met out the expenses through students fees. The third respondent does not come under the provisions of Article 16(1) and 16(2), whereas it comes under the purview of the provision of Article 16(5) of the Constitution of India. It is pertinent to note that only Hindus are eligible for appointment in the third respondent college as it was started by the temple and it is a religious institution governed by the provisions of the HR & CE Act. As per Section 10 of the HR & CE Act, any appointment to the college, shall be a person professing the Hindu Religion and shall cease to hold office as such when he ceases to profess that religion.

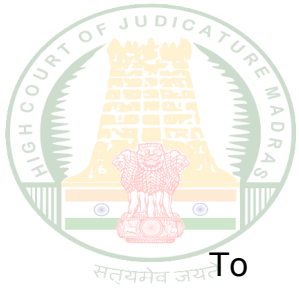


11. In view of the aforesaid reasons, the Writ Petition lacks merits and the same stands dismissed. Consequently, connected Miscellaneous Petitions are closed. There shall be no orders as to costs.

**14.11.2024**

Index: Yes  
Order: Speaking  
NCC : Yes

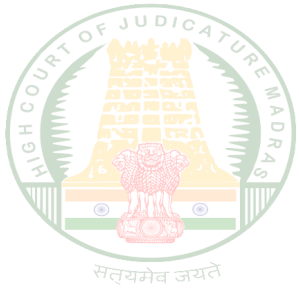
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To

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- 1.The Principal Secretary to Government,  
.State of Tamil Nadu,  
HR & CE Department,  
Secretariat,  
Chennai-600 009.
- 2.The Commissioner,  
HR & CE Department,  
119, Uthamar Gandhi Salai,  
Nungambakkam,  
Chennai-600 034.
- 3.The Joint Commissioner/Executive Officer,  
HR & CE Department,  
State of Tamil Nadu,  
Arulmigu Kapaleeswarar Arts and Science College,  
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VERDICTUM.IN



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**VIVEK KUMAR SINGH, J.**

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